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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,377	03/01/2002	Qingsheng Zhu	279.407US1	3372

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EXAMINER

ALTER, ALYSSA M

ART UNIT PAPER NUMBER

3762

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,377

Applicant(s)

ZHU ET AL.

Examiner

Alyssa M. Alter

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-15, 17-29 and 31-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19-25 is/are allowed.
- 6) ☒ Claim(s) 11, 12, 17, 18, 26, 31, 33 and 34 is/are rejected.
- 7) ☒ Claim(s) 13-15, 27-29 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see page 7, filed May 23, 2005, with respect to the objection of the drawings and 112 Rejections of claims 27-29 has been withdrawn. However, the examiner still maintains the 102 Rejections of claims 11-12, 17-18, 26, 29 and 31-32 as being anticipated by Salo (US Patent Publication 20030125774) now US Patent No. 6,892,095. Therefore, claims 11-12, 17-18, 26 and 31 stand and claims 33-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Salo (US Patent Publication 20030125774) and claims 13-15 and 27-28 stand and claims 29 and 32 are objected to for depending on a rejected base claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 11-12, 17-18, 26 and 31 stand and claims 33-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Salo (US Patent Publication 20030125774) for reasons previously made of record.

The Applicant argues that they "cannot find in Salo "measuring a temperature change in the coronary sinus". However, Salo discloses on page 4, paragraph 41, "In

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most cases, mounting the thermal sensor 8 about 5 cm to about 10 cm from the distal tip of the lead system 1 will provide a suitable location for **measuring an averaged blood temperature in the coronary sinus**"(emphasis added).

Furthermore, the Applicant's piecemeal recitation of the examiner's rejection in Office Action is unsound. Salo discloses on page 3, paragraph 34, "the great vein (i.e. the coronary sinus)". It is acknowledged that the Applicant has argued that the great vein is not the coronary sinus. However, Salo *discloses*, for all intensive purposes of their invention, have disclosed the coronary sinus to be the great vein. Thus, when Salo mentions the great vein, it is to be referring to the coronary sinus. Likewise, since the great vein is an example of a coronary vein, they are tantamount to each other.

The Applicant argues that Salo does not disclose the "use of temperature changes in the coronary sinus as an indicator of a change in the functional status of the heart". However, Salo does disclose on page 4, paragraph 44, that "the thermal sensor 9 of a system according to the present invention can measure the temperature of the blood returning through the coronary sinus after having passed through myocardial tissue." Furthermore, "the programmable circuit determines a hemodynamic state from the sensed average coronary sinus blood temperature"(page 2, paragraph 20).

As to claim 33-34, since the hemodynamic state is determined by the average coronary sinus blood temperature, a decrease in the average coronary sinus blood pressure would affect the functional status of the heart.

***Allowable Subject Matter***

1. Claims 13-15 and 27-28 stand and claims 29 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. Claims 19-25 stand allowed for reasons previously made of record.

***Conclusion***

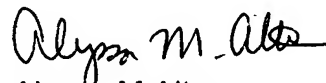
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

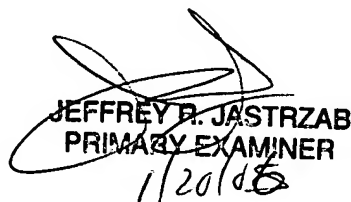
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571) 272-4939. The examiner can normally be reached on M-F 9am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alyssa M Alter  
Examiner  
Art Unit 3762  
AA

  
JEFFREY R. JASTRZAB  
PRIMARY EXAMINER  
1/20/08